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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,215

01/14/2004

Bernhard Dehmer

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INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT.
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EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

05/28/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary	Application No. 10/757,215	Applicant(s) DEHMER, BERNHARD	
	Examiner Brian R. Gordon	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 20-30, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 20-24, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) 26-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2008 has been entered.

Response to Arguments

Applicant's arguments filed March 12, 2008 have been fully considered but they are not persuasive.

2. Applicant asserts Chang fails to disclose or suggest a deposition device that deposits liquid on the flap while in contact with the flap, as recited by claim 1. The amendment is directed to the intended use or operation of the deposition device. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There is nothing which precludes applicant's apparatus from being used to dispense liquid onto the flap when the deposition device is not in contact with the flap.

Applicant further asserts Chang also fails to disclose or suggest using a deposition device to contact the flap and deposit a liquid on a surface of the flap, as recited by claim 32.

It should be noted that claim 32 does not require the deposition to occur simultaneously while the device is contacting the surface of the flap. The claim only requires that the device to contact the flap and deposit a liquid.

Even if the claim was amended to recite the deposition occurs while the device is in contact with the surface of the flap, this would be recognized as the conventionally known concept of "touch-off dispensing".

In view of applicant's arguments the 102 rejection of claims 32-33 are withdrawn. However, as recited above the method would be obvious in view of the well known "touch-off" dispensing process.

Chang et al. clearly meets the limitations of the device. Chang discloses a hinged closure device including inclined flap 36 that can be installed on a container (see Figures 1-3). Chang further teaches sampling device 50 (deposition device) is employed and capable of contacting the flap (see figure 12 and paragraph 0035).

For reasons given herein, the previous rejection is hereby maintained.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It should be noted the only structural requirement of claim 3 is that the flap includes a surface which is implied in claim 1. The remaining portion of the claim is directed to the intended use of the surface.

The amended "to" clause of claim 3 is directed to an intended function of the flap. However it is unclear what further structure is provided to function as claimed. Any surface that comes in contact with a moving stream can prevent or terminate such stream from moving in the initial direction of flow or allow of a droplet to be deposited thereon. The claim does not provide any further structure than the surface.

While claim 5 recites the flap subdivides the channel it is unclear what is the relevance of the flap to sealing of the second chamber. Does flap seal the chambers?

The amendment to claim 6 now suggests the flap (rather than the hinge) exerts an elastic restoring force.

Claim 7, is not further structural limiting. There is no specific structure claimed as to suggest that the surface would not otherwise be capable of accommodating liquid. Furthermore it is unclear what applicant intends for the term "accommodates" to mean. Does this mean the surface has a structure to retain liquid on the surface? If so what structure allows for such?

Claim 8 appears to be directed to intended use of the device rather than structure.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-3, 5-17, and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang et al. US 2003/0052074.

Chang et al. discloses the invention as claimed. See abstract, Figure 12, and [paragraph 0035].

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 4, 20-21, and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. US 2003/0052074.

Chang et al. does not disclose the wall or flap 36 as being manufactured from a foil material.

However, Chang et al. disclose suitable materials for forming the cover 52 include, but are not limited to, thin metallic foils (e.g., aluminum foil).

It would have been obvious to one of ordinary skill in the art at the time of the invention to recognize the wall 36 may be manufactured from the same type of materials.

Chang et al. discloses the claimed invention except for the ellipse It would have been an obvious matter of design choice to change the shape of the opening and wall,

since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As to the method, Chang et al. does not disclose the depositing fluid on the surface of the flap.

However, such a concept of touch off dispensing is conventionally known in the art. Furthermore it would have been reasonably foreseeable and obvious to one of ordinary skill in the art that liquid would be dispensed upon the surface of the flap of Chang et al during the insertion process of the dispensing device.

Allowable Subject Matter

9. Claim 26-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and any further 112 rejections.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Krause, Reinhard; Hajizadeh, Kiamars et al.; Carey, Glen et al.; Hanson; Tina R.; Barbera-Guillem; Emilio; Lewis; Richard P. et al.; Boulton; David A. et al.; Lahti; Arto; and Rohrabacher; Cliff et al. disclose devices including flaps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/
Primary Examiner
Art Unit 1797